

ADOT JPA File No.: JPA 07-126-*I*
AG Contract No.: P001-2007-003879
Project No.: CM-SUR-0(202)X
TRACS No.: **SS675 01C**
Project: Surprise Center-Parkway
Phase I – Purchase & Install TMC equip

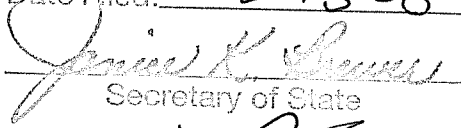
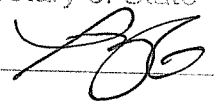
INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SURPRISE

THIS AGREEMENT is entered into February 13th 2008, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SURPRISE acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and 28-334 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. Such project is within the boundary of the City has been selected by the City; the field survey of the project has been submitted to the Federal Highway Administration ("FHWA") for its approval.
5. The interest of the State in the project is in the acquisition of expended Federal funds for the use and benefit of the City and to authorize such Federal funds for the project by Federal law and regulations.
6. The City, in order to obtain Federal funds for the construction of the project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City and FHWA.

NO. 29479
Filed with the Secretary of State
Date Filed: 2-13-08

Secretary of State
By: 

7. The work embraced in this Agreement is to install and purchase Traffic Management software to connect control and communication with the City of Surprise's Traffic signals, hereinafter referred to as the "Project". The State and City will be responsible for jointly administering the purchase of this equipment. The estimated cost of the Project is as follows:

Total Estimated Project Cost (TRACS No.: SS675 01C)	\$ 1,000,000.00
Federal-aid Funds @ 94.3% of (capped)	\$ 600,000.00
Estimated City Funds @ 5.7%	\$ 36,267.00
Estimated City Funds @ 100%	\$ 363,733.00
Estimated Total City Funds	\$ 400,000.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such project funds are available by FHWA for the Project. Be the designated authorized agent for the City and, through the State's Procurement Process, advertise for, receive and open bids with the aid and consent of the City and the FHWA.

c. Upon execution of this Agreement, coordinate with the City regarding the specifics of the equipment to be ordered by the State to best ensure the requirements of the Project are met. Enter into a contract(s) with a firm(s) to whom the award is made for the purpose of the Project.

d. Instruct the vendor to deliver equipment directly to the City for final acceptance and to bill the City directly. The State will reimburse the City with capped Federal funds up to **\$600,000.00** within thirty days (30) after receipt and approval of an invoice for equipment purchased under this Agreement. Therefore, the City agrees to set aside funds in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

e. Not be obligated to maintain said equipment, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City shall:

a. Designate the State as authorized agent for the City, if such project is approved by the FHWA and project funds are available.

b. Be responsible for any overage should costs exceeding the maximum Federal funds available for the Project. Agree the cost of the analysis and works covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

c. Coordinate with the State during the procurement process of the Project.

d. Install the video equipment purchased under this Agreement and maintains all improvements provided by this Project for the entire design life of the system and equipment.

e. Be responsible for unforeseen conditions or circumstances increase the cost of said work, such that a change in the extent or scope of the work called for in this Agreement becomes necessary, be obligated to incur and will pay for said increased costs.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The City shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid and related matters; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the equipment purchased and to install a video wall covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

3. This Agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this Agreement for maintenance shall be perpetual, unless assumed by another governmental entity.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be

terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised as a result of termination under this paragraph.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
FAX (602-712-7424

City of Surprise
Brian Moberly
12425 West Bell Road Suite D-100
Surprise, Arizona 85374
(623) 583-1000

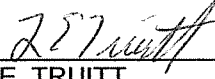
11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF SURPRISE

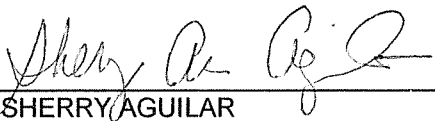
STATE OF ARIZONA

Department of Transportation

By 
L.E. TRUITT
Mayor

By 
DALE BUSKIRK, DIVISION DIRECTOR
Transportation Planning Division

ATTEST:

By 
SHERRY AGUILAR
Clerk

RESOLUTION # 08-03

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA (ADOT) AND THE CITY OF SURPRISE FOR PHASE 1 OF THE TRAFFIC MANAGEMENT CENTER (TMC) EQUIPMENT AND INSTALLATION.

WHEREAS, pursuant to Arizona Revised Statutes § 11-951, *et seq.*, the City of Surprise has the authority to enter into intergovernmental agreements with other governmental entities.

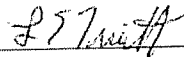
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Surprise, Arizona, as follows.

Section 1. The City of Surprise hereby agrees to enter into an Intergovernmental Agreement between the State of Arizona (ADOT) and the City of Surprise for phase one of the Traffic Management Center to include equipment and installation.

Section 2. The City of Surprise approves expenditure of funds for this agreement from the Master Computer System budget item and the estimated total city expenditure is \$400,000.00.


Section 3. The Mayor is hereby authorized and directed to sign this Amendment to the Intergovernmental Agreement between the State of Arizona (ADOT) and the City of Surprise for phase one of the Traffic Management Center including equipment and installation as defined in the attached agreement.

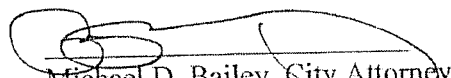
APPROVED AND ADOPTED this 10th day of January, 2008.


L.E. Truitt, Mayor

Attest:

Approved as to form:


Sherry Aguilar, City Clerk


Michael D. Bailey, City Attorney

Yeas: Mayor Truitt, Council Members; Alton, Foro, Johnson, Longabaugh, Williams and Villanueva.

Nays: _____

ATTORNEY APPROVAL FORM

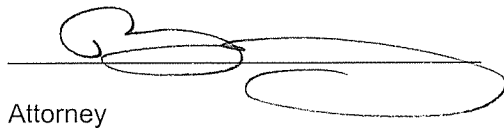
FOR THE CITY OF SURPRISE

INTERGOVERNMENTAL AGREEMENT DETERMINATION LETTER


I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and The CITY OF SURPRISE, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned CITY Attorney who has determined that it is in proper form and within the powers and authority granted to The CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties to enter into said Agreement.

Dated 1/16, 20076



Attorney

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
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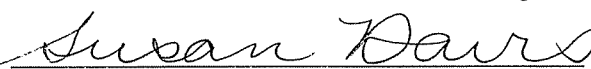
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012007003879 (**JPA 07-126-I**), an Agreement between public agencies, i.e., The State of Arizona and The City of Surprise, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: February 7, 2008

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:142592
Attachment